CF0000064396

(2)

HC

Single Bench (criminal)

IN THE HIGH COURT OF JUDICATURE AT JABALPUR M.P.

CRIMINAL APPEAL NO. 1006 of 2000.

Appellant. (In Jail) ::: Sunil Kumar son of Sachidanand, aged about 25 years, R/o village-Pakiganj, Distt: Patna. (Bihar)

Versus.

Respondent. ::: The State of M.P.
Through the Police-Station Paki Mogera,
Distt: Korba M.P.

CRIMINAL APPEAL UNDER SECTION 374(2) OF THE CODE OF CRIMINAL PROCEDURE.

(12)

HIGH COURT OF JUDICATURE AT BILASPUR (C.G)

CRIMINAL APPEAL No.1006/2000

Sunil Kumar

-V-

The State of M.P (now Chhattisgarh)

J U D G M E N T

(23-04-2001)

The appellant being aggrieved by the Judgment dated 17-11-1999 passed in Special Case No.56/1999 by the learned Special Judge (NDPS Act) Bilaspur, convicting the appellant u/s 20(b)(i) read with section 8 of the N.D.P.S. Act and sentencing him to undergo R.I. for 3 years and pay a fine of Rs.10,000/- in default of payment of fine, to undergo further R.I. for one year; has filed this appeal.

(2) On completion of the investigation, the challan was filed and the accused was produced before the Court. On 01-11-1999, the challan was filed. On 15-11-1999, at the request of the accused, the case was adjourned to 16.11.1999, but the matter was required to be adjourned to 17-11-1999. On 17-11-99 when the details of the charges were read to the accused, he admitted his guilt. On 17-11-1999, the accused endorsed his signatures on the charge papers and admitted the guilt. In view of the said confession/ admission before the Court, the trial Court convicted the accused and awarded him the sentences as referred to above.

(3) Learned counsel for the applicant submits that looking to the quantity of Ganja recovered at the instance of present appellant, the term of jail sentence so also the fine amount are on the higher side. He submits that the sentences awarded to him deserves to be reduced.

(4) On the other hand Shri Ranveer Singh, learned counsel for the State, submits that the Court below was not unjustified in awarding the sentence and as the question of sentence was in the discretion of the said Court, this Court should not interfere.

(5) I have heard the parties at length.

(6) Section 20(b)(i) of the N.D.P.S.Act provides that in case of Ganja, the jail sentence may be upto the period of 5 years. While convicting the accused, the Court shall impose fine upon him. Section 20(b)(i) of the Act does not provide for a minimum sentence as is provided in cases relating to section 18 and such others. In an offence punishable u/s 20(b)(i) of the Act, a discretion is given to the Court to award some sentence which is suitable in the opinion of the Court looking to the facts and circumstances.

(7) True, it is that the Court below had jurisdiction to award the sentence upto 5 years, but while awarding the sentence the Court should not forget that it is required to take into consideration the totality of the circumstances. In the present case, the confessional plea on the part of the accused, in fact, would show

that he was repenting or suffering with the feeling of guilt which was striking on his conscience, therefore he admitted the guilt. Such a confession/admission on his part, in fact, can be taken to be a mitigating circumstance. The Court below had acted very mechanically in awarding the sentence of 3 years R.I and imposing a fine of Rs.10,000/-.

(8) Taking into consideration the totality of the circumstances and the fact that only 2 K.Gs. of Ganja was recovered from the possession of the accused and that under the pressure of his conscience he admitted the guilt, I consider present to be a fit case for reducing the sentence. The jail sentence of 3 years R.I. is reduced to the period of 2 years. The fine amount is also reduced from 10,000/- to Rs.3,000/-. In default of payment of fine, the appellant shall undergo R.I. for 3 months.

(9) The appeal to the extent indicated above is allowed. The accused who is in jail be informed through the agency of the trial Court.

Sd/-
R.S. Garg
Judge
23-04-2001